

OGC 81-10691
18 December 1981

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MEMORANDUM FOR: ✓ 

FROM:

Chief, Legislation Division/UGC

SUBJECT:

Relief from OMB Manyear Ceilings

Attached is a background paper in preparation for our meeting on the above subject on Monday, 21 December at 1400 in 5E-11 Headquarters. The purpose of the meeting is to decide whether or not to seek relief from the OMB Full Time Equivalent manyear ceilings through the FY 1983 Intelligence Authorization Bill.

Attachment

cc: D/Finance (Mr. Sherman)

17 December 1981

MEMORANDUM FOR:

STAT

FROM:

SUBJECT: Full Time Equivalent (FTE)
Personnel Management

1. Change in Federal Personnel Management Concept. Until recently, federal agencies managed their personnel in accordance with authorized personnel end-strengths established through the congressional budget process. An agency could have no more employees on the closing day of the fiscal year than the number of personnel authorized for the agency's end-strength for that fiscal year. Authorization of agency end-strengths, combined with dollar budget limitations, constituted the principal tool for managing the size of federal agencies' work forces. Recently, on instructions from the Office of Management and Budget (OMB), federal agencies have converted from the authorized end-strength concept of personnel management to the Full Time Equivalent (FTE) concept of personnel management. Under the FTE concept, federal agencies manage their personnel resources in accordance with a manyear ceiling OMB establishes in the budget process. An agency must carry out its mission during the fiscal year without exceeding by the end of the fiscal year the number of manhours of worktime authorized for that agency. To illustrate simply the difference between the end-strength and FTE concepts, the personnel management ceilings for a given fiscal year of a small federal agency with close to 10,000 employees might be expressed as follows:

End-Strength Personnel CeilingMeaning

10,000 Employees

On 30 September (last day of fiscal year), the agency cannot have more than 10,000 employees

FTE Personnel CeilingMeaning

20,800,000 manhours

(10,000 full time employees or equivalent, multiplied by 40 hours per week, multiplied by 52 weeks per year)

During the fiscal year, the agency cannot use employees for more than 20,800,000 hours of work

2. History of the FTE Concept. In September 1977, President Carter authorized OMB and the Civil Service Commission to conduct a pilot FTE personnel management program. For the participating agencies, 1/ OMB established manyear ceilings representing the maximum number of hours their employees could work in FY 1979.

In October 1978, Congress enacted the Federal Employees Part-Time Career Employment Act of 1978, P.L. 95-437 (50 U.S.C. 3401 et seq.) 2/ which provided in pertinent part:

"In administering any personnel ceiling applicable to an agency (or unit therein), an employee employed by such agency on a part-time career employment basis shall be counted as a fraction which is determined by dividing 40 hours into the average number of hours of such employee's regularly scheduled workweek. This section shall become effective October 1, 1980."
(5 U.S.C. 3404)

Although this provision could properly have been carried out with personnel ceilings based on end-strength, OMB viewed enactment of this provision as a sign of Congressional support for FTE manyear personnel ceilings.

In April 1979, the Office of Personnel Management (OPM), successor to the Civil Service Commission, favorably evaluated the pilot FTE personnel management program. OMB extended the FTE requirements to five Cabinet departments for FY 1981. 3/ In February 1980, OMB decided to extend the FTE requirements to the remainder of the federal government beginning in FY 1982. 4/

On 30 July 1980, the Director of the OMB issued OMB Circular A-64 (revised) which requires all federal agencies to prepare budget estimates relating to personnel requirements in terms of full-time equivalent employment. The Circular requires all federal departments and agencies to manage their personnel in

1/ The participating agencies were the Veterans Administration, General Services Administration, Environmental Protection Agency, Federal Trade Commission, and the Export-Import Bank.

2/ The Act does not apply to the Central Intelligence Agency. 5 U.S.C. 3401(1)(vii) ("agency" does not include CIA).

3/ The five departments were Agriculture, Education, Health and Human Services, Housing and Urban Development, and the Treasury.

4/ OMB reported to Congress its intention to move to FTE manyear ceilings in FY 82 in its FY 81 budget submission. Special Analyses, Budget of the United States Government, Fiscal Year 1981, 280 (1980).

accordance with the FTE manyear employment ceilings effective FY 1982, which began 1 October 1982. OMB and OPM monitor agency compliance with FTE manyear ceilings through agency monthly reports to OPM. 5/

3. Department of Defense Exemption from FTE System. Section 904 of the "Department of Defense Authorization Act, 1982," P.L. 97-86 (1 December 1981), establishes a new section 140b of title 10, United States Code:

"140b. Prohibition of certain civilian personnel management constraints.

The civilian personnel of the Department of Defense shall be managed each fiscal year solely on the basis of and consistent with (1) the workload required to carry out the functions and activities of the Department, (2) the funds made available to the department for such fiscal year, and (3) the authorized end strength for the civilian personnel of the department for such fiscal year. The management of such personnel in any fiscal year shall not be subject to any man-year constraint or limitation."

The Department of Defense won this statutory exemption from the OMB FTE manyear ceiling requirements over strong OMB opposition.

a. Department of Defense Position. The Department of Defense (DOD) objected strongly to OMB imposition of the FTE civilian personnel management requirements on DOD. The Department argued that the FTE controls constrain DOD managers much more than existing end-strength and dollar budget controls, to the extent that DOD managers will be deprived of the personnel management flexibility essential to DOD missions, particularly those related to maintenance, construction, and repair, which have greatly fluctuating workloads. DOD also argued that OMB had not sufficiently tested FTE controls since OMB's pilot program had not included agencies with functions remotely resembling those of DOD. Finally, DOD argued that FTE controls cost more to administer than do the existing end-strength and dollar budget controls. 6/

5/ Departments and agencies submit Standard Form 113-G (Report of Full-Time Equivalency/Workyear Civilian Employment) to OPM monthly. See OMB Circular A-64 (revised) and FPM Letter 298-11 (23 September 1980).

6/ DOD also expressed concern that OMB failed to provide guidance on how OMB would treat under manyear ceilings DOD's 100,000 foreign indirect hire personnel engaged in U.S. defense activities overseas.

b. Office of Management and Budget Position. OMB strongly opposed exemption of DOD from FTE civilian employment ceilings. OMB would not grant DOD relief itself, nor would it clear DOD requests to Congress for legislative relief. Thus, the OMB-cleared version of the FY 1982 DOD Authorization Bill (S. 815 introduced by request by Senator John Tower, Senate Armed Services Committee Chairman, and H.R. 2970 introduced by request by Representative Melvin Price, House Armed Services Committee Chairman) did not contain the DOD FTE relief provision later enacted. OMB failed to respond to a joint letter from the Chairmen of the House Armed Services Subcommittees on Military Personnel and Compensation and Readiness requesting that OMB defer applying the FTE concept to DOD for two years, to permit adequate testing of the concept. OMB has advised DOD that although the new provision (10 U.S.C. 140b) prohibits OMB from imposing manyear constraints on DOD, OMB will still require DOD to make budget submissions based on the FTE concept and will monitor DOD personnel management in accordance with the FTE concept. DOD has not yet responded to this advice from OMB.

c. The Armed Services Committees Position. After hearings on H.R. 2970, House Armed Services Committee Chairman Price introduced a clean bill, H.R. 3519, section 910 of which prohibited the use of funds appropriated pursuant to authority contained therein to establish or administer FTE personnel management controls within DOD. The Committee retained this provision of H.R. 3519 at markup and the House passed the Bill containing the provision. The Senate Armed Services Committee inserted in S. 815 at markup a section 911 to prohibit imposition of any FTE manyear constraints on DOD civilian personnel and the Senate passed the Bill containing the provision. The House-Senate Conference Committee on S. 815 adopted the Senate provision permanently barring the imposition of FTE constraints on DOD management of its civilian personnel.

4. Options for CIA With Respect to OMB Manyear Ceilings. The Central Intelligence Agency has four basic options in dealing with OMB FTE manyear ceiling requirements.

a. Full Compliance. The Agency would comply fully with the OMB requirements in the same manner as all federal agencies, other than DOD, do. If the Agency should consume its manyear allocation prior to the end of the fiscal year, the Agency would request a supplemental allocation from OMB or would execute a reduction in force.

b. Limited Compliance Consistent With the Agency's Mission. The Agency would comply with the OMB requirements only insofar as compliance does not interfere with the Agency's mission. If the Agency consumes its manyear allocation prior to the end of the fiscal year, the Agency would

continue to employ its personnel, in reliance on subsection 8(a) of the Central Intelligence Agency Act of 1949 for authority. 7/ The Agency would also, if the Agency finds it necessary, modify or eliminate its compliance with the requirement to report monthly to OPM on compliance with manyear ceilings, relying on Section 6 of the Central Intelligence Agency Act of 1949 for authority. 8/

c. Executive Branch Relief. The DCI would obtain from the Director, OMB, or the President if necessary, an exception to the OMB Circular A-64 (revised) requirement that all federal agencies follow the FTE manyear ceiling system. It should be noted that in issuing Executive Order 12333 (4 December 1981) governing intelligence activities, the President reduced the role of OMB in the National Foreign Intelligence Program budget process. 9/

d. Legislative Relief. The Agency would seek legislation similar to that contained in section 904 of the "DOD Authorization Act, 1982," to exempt CIA from any manyear personnel constraints. The necessary language would be

7/ Subsection 8(a) of the CIA Act provides in part: "Notwithstanding any other provisions of law, sums made available to the Agency by appropriation or otherwise may be expended for purposes necessary to carry out its functions, including--(1) personal services...."

8/ Section 6 of the CIA Act provides in part: "...the Agency shall be exempted from... the provisions of any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency...."

9/ Section 1-602(c) of Executive Order 12036 (24 January 1978) provided that:

"The Director of Central Intelligence shall review and evaluate the national program and budget submissions and, with the advice of the NFIB and the departments and agencies concerned, develop the consolidated National Foreign Intelligence Program budget and present it to the President through the Office of Management and Budget;..." (emphasis added).

Section 1.5(n) of Executive Order 12333 (4 December 1981) provides that the DCI shall:

"(n) Develop, with the advice of the program managers and departments and agencies concerned, the consolidated National Foreign Intelligence Program budget, and present it to the President and the Congress."

inserted in the Fiscal Year 1983 Intelligence Authorization Bill at the appropriate stage in the legislative process.

Given the high level concern with the problems OMB FTE manyear ceilings have caused the Agency, a decision on which option(s) the Agency will pursue should be made at a senior level fairly soon.



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S-E-C-R-E-T

FTE CEILING UPDATED

| 25X1 | CURRENT FTE ALLOCATION (REVISED) | ANTICIPATED NEED | LESS ADJUSTMENT* | SHORTFALL |
|------------------------|--|---------------------|---------------------|-----------|
| FULL-TIME PERMANENT | <div></div> | | 40 - 60 | 1 - 21 |
| PART-TIME INTERMITTENT | | | | - |
| TOTAL | | | 40 - 60 | 3 - 17 |

*Adjustment allows for ceiling count employees who are not paid and thus do not enter FTE Reporting System (i.e., such as on 1st 30 days of LWOP).

S-E-C-R-E-T

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